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EXAMINER

O MALLEY, KATHRYN S

ART UNIT

PAPER NUMBER

3749

DATE MAILED: 05/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/785,382

Applicant(s)

CORREA ET AL.

Examiner

Kathryn S. O'Malley

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☒ Interview Summary (PTO-413) Paper No(s). 6.
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) ☐ Other: _____

DETAILED ACTION

Drawings

The corrected or substitute drawings were received on March 7, 2002. These drawings are accepted by the examiner.

Specification

The corrections made to the specification in the amendment dated March 4, 2002 are acceptable.

Amendment to Claims

The addition of claims 12-15 is acceptable.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 15 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. A spray bottle is mentioned in the Summary of the Invention on page 4, lines 1-3 but nowhere else. The entrance orifice, internal volume, pump means, and aeration nozzles in claim 15 are not discussed in the specification at all.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Vallis.

Vallis discloses a blow dryer apparatus with an elongated handle 10 and extending head along a center line and a nozzle and air outlet port 14 directed perpendicularly from said center line. The apparatus also includes a rim and a brush attachment that covers the air outlet port. Note column 2, line 64- column 3, line 15 and Figure 3. Furthermore, the brush attachment has a flattened, curved outer surface and a semi-cylindrical base 1; supports a plurality of bristles 7 and 8; and forms a plurality of air dispersion orifices 4. These orifices are spaced to allow airflow between adjacent bristles. Note column 2, lines 11-20 and Figures 1 and 2.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vallis as applied to claim 1 above, and further in view of Weiss.

The apparatus disclosed by Vallis does not comprise a power cord or hook grasping means as claimed. However, Weiss discloses a similar apparatus, a hair dryer, that comprises both of these elements. Note column 2, lines 54-60; column 5,

lines 30-32; and Figure 2. As the convenience of hanging small appliances from hooks and powering them with a power cord is common knowledge, and applying both to a hair dryer, in particular, is taught by Weiss, it would have been obvious to one of ordinary skill in the art to modify Vallis's blow dryer with Weiss's power cord and hook grasper.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vallis as applied to claim 3 above, and further in view of Scivoletto.

The brush attachment means disclosed by Vallis does not comprise teathers as claimed. However, Scivoletto discloses a similar apparatus that does. Scivoletto's blow dryer attachment is attached with a tether, or elastic strap 28, designed to circumscribe the head of the blow drier. Note column 2, lines 56-61 and Figure 1. As the use of tethers in hair dryer attachment devices is taught by Scivoletto to produce a snug fit, it would have been obvious to one of ordinary skill in the art to achieve the efficient drying of this snug fit by modifying Vallis's blow dryer attachment with Scivoletto's attachment means.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vallis as applied to claim 1 above, and further in view of Barr, Jr.

While concavity is claimed, it is not seen in the disclosed wall mount. However, as can best be understood, while the blow dryer disclosed by Vallis does not comprise a wall mount as claimed, Barr discloses a similar apparatus that does. Barr's hair dryer caddy is a wall mount shaped to house a hair dryer and accessories, such as brushes. Note column 2, lines 38-50 and Figure 1. As caddies of this sort are convenient for

organized storage and easy access, it would have been obvious to one of ordinary skill in the art to modify Vallis's apparatus with Barr's caddy.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vallis.

Vallis discloses the claimed invention except for the diameters. It would have been an obvious matter of design choice to vary the diameter of Vallis's apparatus, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vallis as applied to claim 3 above, and further in view of Helbling.

Vallis does not suggest using a flat brush attachment. However, it is well known in the art of hair brushes that different shapes may be used interchangeably to achieve particular hair styles and comfort levels. Note the flattened curved brush taught by Helbling in column 2, lines 42-45 and Figure 3. Therefore, it would have been obvious to one of ordinary skill in the art to modify Vallis's brush with a flattened curved outer surface.

Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vallis.

Vallis discloses the claimed invention except for using wood as the material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make Vallis's brush out of wood, since it has been held to be within the

general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Further, note that Depoyian teaches an similar attachable brush head made out of wood. See column 3, lines 46-49 and Figure 8.

Response to Arguments

Examiner notes Attorney's argument that only the claimed designs are to be compared when using a reference for a 102(b) rejection, but emphatically disagrees. All material included in the specification of a patent is part of a printed publication made available to the public and falls within the scope of 35 U.S.C. 102(b).

Examiner notes Attorney's argument that the directional head, attachment position, semi-cylindrical base, and air dispersion orifices as taught by Applicant are not taught by Vallis, but respectfully disagrees. The reference has been reconsidered and is found to contain all of these features.

Examiner notes Attorney's argument that claim 3 was rejected under 35 U.S.C. 103(b) and that claim 6, a claim dependant on claim 3, was further rejected under 35 U.S.C. 103(b). The Attorney is mistaken. Claim 3 has been rejected under 35 U.S.C. 102.

Examiner notes Attorney's argument that proper prima facie rejections under 35 U.S.C. 103 have not been made. Examiner respectfully disagrees but has made changes to the initial rejections to more clearly support Examiner's reasoning for these rejections.

Conclusion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathryn S. O'Malley whose telephone number is (703)308-2844. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on (703)308-1935. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9302 for regular communications and (703)872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1148.

kso
April 17, 2002


Ira S. Lazarus
Supervisory Patent Examiner
Group 3700